



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: B.K. Dynamics, Inc.--Reconsideration
File: B-228090.2
Date: February 18, 1988

DIGEST

In deciding whether a protester might have been prejudiced by an agency's failure to hold meaningful discussions, the General Accounting Office does not require the firm to establish with certainty what would have resulted absent the procurement deficiency. Before the procurement or contract will be disturbed, however, and especially where cost is an important selection factor, there must be some evidence that the protester would have been competitive with the awardee but for the agency's improper actions.

DECISION

B.K. Dynamics, Inc., requests that we reconsider our decision in B.K. Dynamics, Inc., B-228090, Nov. 2, 1987, 67 Comp. Gen. ___, 87-2 CPD ¶ 429, in which we denied B.K.'s protest of the award of a contract under Department of the Air Force request for proposals (RFP) No. F49620-87-R-0006.

We deny the request.

The RFP was issued to obtain a contractor to provide international cooperative research and development assessments. The solicitation provided that technical merit would be the most important factor in the selection decision, although cost also would be important. The Air Force received five proposals and determined that the proposal submitted by Techplan Corporation was technically superior, but placed four offers, including that submitted by B.K., in the competitive range. The Air Force conducted written discussions with those four offerors concerning only their cost proposals, and requested best and final cost offers. B.K.'s best and final cost offer was \$1.2 million higher than Techplan's \$1.93 million final cost offer. The Air Force awarded the contract to Techplan.

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In its protest to our Office, B.K. alleged that the Air Force improperly failed to hold technical discussions with the firm. B.K. asserted that if the Air Force had conducted technical discussions, B.K. might have been able to raise its technical score above that of Techplan. We agreed with B.K. that since the Air Force did hold discussions, it was obligated to point out technical deficiencies and weaknesses it discovered in B.K.'s proposal. We denied the protest, however, because we found that B.K. did not demonstrate it was prejudiced by the Air Force's actions. In this regard, we noted that B.K. itself was uncertain whether technical discussions would have enabled the firm to raise its proposal to the level of Techplan's. Moreover, we pointed out, the RFP provided that technical merit and cost would be considered in choosing the successful offeror, and B.K. did not suggest it could have lowered its cost proposal sufficiently to be competitive with Techplan.

In its request for reconsideration, B.K. argues that because it did not know what issues the Air Force would have raised during discussions and because it did not have access to Techplan's proposal, it could not have been more definite regarding the effect technical discussions would have had on its offer. B.K. further argues that any cost reductions would have been directly dependent upon the technical issues that were raised, and that B.K. certainly would have lowered its cost proposal to some degree if technical discussions had been held. B.K.'s states:

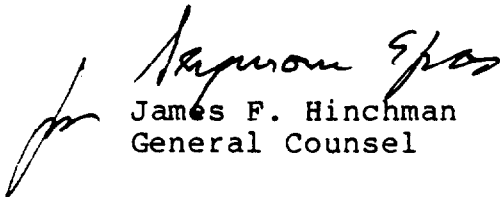
"In essence, the GAO has required that, in order for B.K. to obtain relief, B.K. must predict with certainty what would have resulted if the Air Force had obeyed the law. In the circumstances present in this procurement, such a demand is unreasonable, illogical and inconsistent with prior case law." (Emphasis in original.)

We find no merit in B.K.'s position. In deciding whether a protester might have been prejudiced by an agency's actions, we do not require the firm to, in B.K. words, "predict with certainty what would have resulted." Rather, we think it important that, before we disturb a procurement or a contract, there be some evidence, especially where price or cost is an important selection factor, that the protester would have been competitive with the awardee but for the agency's action. See Sperry Corp., B-224351, et al., Sept. 26, 1986, 86-2 CPD ¶ 362; Centennial Computer Products, Inc., B-211645, May 18, 1984, 84-1 CPD ¶ 528. Neither the record on B.K.'s protest, nor the firm's reconsideration request, persuades us that this would have been the case here.

In our prior decision, we noted that the Air Force evaluators had found that B.K. had a thorough understanding of the agency's needs, and that its proposal had not been marked down very much in any area. The evaluators also concluded the proposal could not have been improved significantly without replacing key personnel. However, the weaknesses the evaluators did notice were of the sort that may well have been resolved through technical discussions. For example, B.K. did not give samples of the Contract Data Requirements Lists formats for required deliverables; B.K.'s proposal for certain line items listed in the statement of work did not demonstrate sufficient program manager involvement; and B.K. failed to address or elaborate on certain factors. Another example, taken from the contracting officer's memorandum of B.K.'s debriefing, is: "some of the proposed personnel were also a bit over-qualified for certain of the tasks which called for a single, full-time individual to be identified."

The fact is, then, that although B.K.'s proposal had weaknesses, it was substantially complete and acceptable as submitted. Further, as stated above, B.K.'s final cost offer was more than \$3 million, whereas Techplan's was less than \$2 million. Given the fact that cost was an important evaluation criterion, we simply do not see how B.K.'s correction, through discussions, of what the Air Force basically considered to be minor matters--certain of which would seem to warrant cost increases anyway--reasonably could have led to such a significant improvement in technical ranking and reduction in proposed costs as to have made the selection of B.K. a real possibility. B.K.'s current suggestion to the contrary is made with the benefit of knowing the contract price, and provides no basis to disturb our view of the realities of the competition.

For a party to prevail in a request for reconsideration, it must show that our prior decision is factually or legally wrong. 4 C.F.R. § 21.12 (1987). Since B.K. has not done so, the request for reconsideration is denied.


James F. Hinchman
General Counsel